

RQ-0116-JC

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COUNTY ATTORNEY  
Fort Bend County, Texas

OFFICE OF THE ATTORNEY GENERAL Opinion Committee  
Executive Administration (001)

BEN W. "Bud" CHILDERS  
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959 Liz Robinson

Honorable John Cornyn  
Attorney General  
209 West 14<sup>th</sup> and Lavaca  
P.O. Box 12545  
Austin, Texas 78711-2548

SEP 03 1999

August 31, 1999

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FILE # ML-40980-99  
I.D. # 40980  
CMRRR# Z 329 871 349

Dear Attorney General Cornyn:

An audit revealed that the three Fort Bend County Court at Law Judges were not paid on an annual basis but on an hourly basis. The auditors in the enclosed Independent Accountant's Report found that each of the Judges were underpaid. (see page 2) The Report calculates the salaries from the date each Judge initially took office until December 31, 1998. The Fort Bend County Auditor confirms the correct salaries were budgeted each year.

Judge McMeans questions the auditor's beginning date, and whether interest is owed on the underpayment. In his enclosed August 12, 1999 memorandum to the County Attorney, he states that he believes the calculation of underpayment should begin no earlier than the beginning of his term on January, 1995.

In *Falls County vs. Mires* 218S.W.2d 491 (TexCivApp.-Waco1949) rehearing denied, the Court decided the two year statute of limitations applied to a County Treasurer's claim for underpayment. The Texas Court of Appeals used the date the County Treasurer filed his claim with Commissioners' Court. The Court held, on page 495, in part:

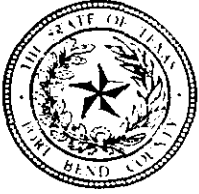
Since plaintiff filed his claim on September 29, 1947, he has a right to go back for his unpaid salary for a period of two years, which would take him back to September, 1945, and since monthly salaries for state and county officers are not paid until the end of the month, we hold that plaintiff is entitled to recover the unpaid portion of his salary for the month of September, 1945 with legal interest, and for each succeeding month thereafter. (emphasis added)

The Fort Bend County Attorney requests an opinion on whether the case *Falls County vs. Mires* is applicable to Judge McMeans' questions.

Very truly yours,

*Portia Poindexter*  
Portia Poindexter, First Assistant

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BEN W. "Bud" CHILDERS  
County Attorney

COUNTY ATTORNEY  
Fort Bend County, Texas

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SEP 23 1999

RQ-0116-JC

Opinion Committee  
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September 20, 1999

FILE # mh-40980-99  
I.D. # 41010

Elizabeth Robinson, Chair, Opinion Committee  
Office of the Attorney General  
209 West 14<sup>th</sup> and Lavaca  
P.O. Box 12545  
Austin, Texas 78711-2548

CMRRR# Z 239 871 376

RE: ID # 40980

Dear Ms. Robinson:

You have asked for a brief that references any relevant state statutes and that state my conclusions with respect to the questions asked. I had found no relevant statutes on the questions asked by Judge McMeans, however, I did find *Falls County vs. Mires* 218 S.W. 2<sup>nd</sup> 491 ( Tex. Civ. App.-Waco 1949) rehearing denied. This case appeared to be relevant to the statute of limitations questions, and interest on underpayment of the compensation of an elected official. The case cites Vernon's Ann. Civ. St. Art. 5526 which has been codified in the Texas Civil Practice and Remedies Code Section 16.003. The Court of Appeals in *Falls County* held that the two year statute of limitations applied where an elected official claimed he was underpaid. The *Civil Practice and Remedies Code*, Section 16.003 states in part as follows:

A person must bring suit \*\*\*for taking or detaining the personal property of another\*\*\* not later than two years after the day the cause of action accrues.

I am enclosing your letter of September 9,1999, and my letter of August 19, 1999.

Very truly yours,

Portia Poindexter, 1<sup>st</sup> Assistant County Attorney